

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Wilson-Davis & Co., Inc.,)	CASE NO. 1:16 CV 3056
)	
Plaintiff,)	JUDGE PATRICIA A. GAUGHAN
)	
Vs.)	
)	
James Mirgliotta, et al,)	<u>Order</u>
)	
Defendants.)	

This case is before the Court upon Defendants’ Motion to Reconsider the Court’s February 2, 2017 Order (Doc. 31). In its February 2, 2017 Order, the Court converted Defendants’ Motion to Dismiss into a motion for summary judgment because Defendants relied on several matters outside the pleadings in support of the second argument that they raised in the motion: that the parties are required to arbitrate this dispute because Defendants were “customers” of Wilson-Davis under FINRA’s rules. In their Motion to Reconsider, Defendants now state that they will withdraw that argument and will instead rest their Motion to Dismiss only on their first argument: that Wilson-Davis is required to submit to arbitration the question of whether Defendants were customers of Wilson-Davis. Because Defendants do not cite any

evidence outside the pleadings in support of this argument, Defendants' Motion to Reconsider is GRANTED.

Defendants' second argument in the Motion to Dismiss is withdrawn. The Court will address only the first argument that they raise in the motion and will treat the motion as one under Rule 12(b)(6); it will not be converted into a motion for summary judgment. The Court will rule on the motion expeditiously.

IT IS SO ORDERED.

Dated: 2/9/17

/s/ Patricia A. Gaughan

PATRICIA A. GAUGHAN

United States District Judge